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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/777,284	02/11/2004	Martin Zilliacus	004770.00261	5467

22907 7590 12/30/2009

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EXAMINER	
DOAN, DUYEN MY	

ART UNIT	PAPER NUMBER
2452	

MAIL DATE	DELIVERY MODE
12/30/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/777,284	ZILLIACUS ET AL.	
	Examiner	Art Unit	
	DUYEN DOAN	2452	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *24 September 2009*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *23-49 and 53-103* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *23-49 and 53-103* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *11 February 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

In view of the Appeal Brief filed on 9/15/2009, PROSECUTION IS HEREBY REOPENED. Additional rejection is added for claim 100.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

Response to Arguments

In regard to the 112 2nd rejection, the argument is persuasive, therefore the 112 2nd rejection is withdraw.

In response to applicant's argument that the combination of Griswold and Lin are not properly combine, examiner disagrees, Lin's invention relates to downloading

software or musical ring tone from a sever to mobile device, the user has to pay a fee in order to use these files. Griswold's invention relates to downloading software from a server, the user also pay the fee, or the license fee to use the software product, the software only configured for use a certain amount of time base on the fee paid by the user. Both of Griswold and Lin relates to fee base usage of software products. It is obvious and motivated by a person with ordinary skill in the art at the time the invention was made to modify fee base downloading of software of Lin by incorporate teaching “configure the software to become unavailable upon expiration of time" of Griswold because by doing so it would prevents the financial lost and protecting the software such as the musical ring tone in Lin being misused.

In response to applicant’s argument that the prior art does not teach, "the applicant configured to become unavailable upon expiration of time period", Griswold discloses the software product is configured to use for a predetermine time period, after this time period elapse the applicant will become unavailable (see Griswold col.9, lines 1-14).

In response to applicant’s argument that the prior art does not teach, "the user selects the time period” Griswold discloses allowing the user or licensee to select the license term which can be the date/time period, or the number of concurrent uses which the licensee paid for use that product (see Griswold col.7, lines 15-27).

In response to applicant's argument that the prior art does not teach, "configure to become non-functional". Examiner interprets "non-functional" as "cannot use the product anymore". Mankoff discloses if the coupons will be deleted, as the result of the deleting, the coupon can not be use anymore, this is equivalent to the claimed "become non-functional". In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.,* 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Lin-Gris substantially discloses the invention. Markoff would properly combine with Lin-Gris because they all concern with the expiration of the content.

In response to applicant's argument that the prior art does not teach, "infrared", Lin teaches downloading ring tone over a wireless network, infrared is a well known short range communication in the wireless network (see Smith pat 6,615,248 for teaching of infrared). It is obvious to one ordinary skill in the art that infrared would be an option implemented in Lin.

In response to applicant's argument that the prior art does not teach, "downloading the application...if the number of time remains" Gris teaches the concept of defining the licensing or term of use on the product, the user can specify the paid

through date and the number of uses on the product. It's inherently that if the license term or the number of uses does not reach the expiration, the system still allow the user to download the product. Gris teaches this feature, otherwise the license term would have no use in Gris.

In response to applicant's argument that the prior art does not teach, "subsequent request comes from second mobile terminal" Gris teaches the method of ensuring the licensed product is used on machines which it is licensed (see Gris col.3, lines 31-37). Base on this, the user can specifies a second machine that the user uses to access the licensed product.

In response to applicant's argument that the prior art does not teach, "deleting unexpired content to free up storage space" the argument is persuasive. However, the new rejection is made in view of Lin-Gris-Lazarus et al (us pat 5,652,613).

In response to applicant's argument that the prior art does not teach, "deleting executable code". In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.,* 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Lin-Gris substantially discloses the invention. Gris and Lin discloses concept of downloading programming logic/software to client device base on

license associated with the programming logic/software. Markoff teaches the concept of deleting the expired content. One ordinary skill in the art would realized that to delete the executable code would be desired when the content is the software instead of coupons.

In response to applicant's argument that the prior art does not teach, "application retain customized setting in the mobile terminal" Lin teaches the ring tone logic remain in the client terminal. The ring tone is customized to associates with a particular incoming call. So when the device receives a call, it associates a particular ring tone to that particular caller (see col.5, lines 16-27).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 23-41, 43-44, 53-58, 63-67, 69-70, 72-92, 96-97, 101-103 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lin et al (us pat 6,366,791) (hereinafter Lin) in view of Griswold (us pat 5,940,504) (hereinafter Gris).

As regarding claim 23, Lin discloses a method comprising:

connecting a first mobile terminal (see col.3, lines 9-18, mobile terminal connect to the operator, the operator with the database in figure 3) to an application database through a cellular communication network, the application database containing at least one application (see Lin col.4, col.4, lines 39-47, information such as ringing tone in the database);

receiving a user-specified choice of the at least one application for downloading to the first mobile terminal (see Lin col.3, lines 9-20, mobile subscriber choosing the music ringing tone);

providing the application database with information identifying a user of the first mobile terminal (see Lin col.3, lines 21-34, operator provide music ring tone to user);

downloading the chosen application from said application database to the first mobile terminal (see Lin col.3, lines 21-34, see col.3, lines 60-65, download the music score); and

storing indicia of the chosen application and of the information identifying the user (see Lin col.4, lines 56-67, store the mobile subscriber and the selected musical score cited with that mobile number to receive the ringing tone).

Lin does not disclose receiving a user-specified selection of a variable lifetime for the chosen application, during which lifetime the chosen application is executable, the selected lifetime during which the chosen application is further executable at mobile terminals accessible by the user.

Gris discloses selecting a lifetime for the chosen application, during which lifetime the chosen application is executable (see Gris col.7, lines 15-27 Griswold

discloses allowing the user or licensee to select the license term which can be the date/time period, or the number of concurrent uses which the licensee paid for use that product), the selected lifetime during which the chosen application is further executable at mobile terminals accessible by the user (see Gris col.7, lines 35-46, the time the license executed at the client).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to combine the teaching of Gris to the invention of Lin to include a life time for an application for the purpose of managing the licensed product (see Gris col.3, lines 31-48).

As regarding claim 24, Lin-Gris discloses downloading the chosen application is performed over a wireless connection (see Lin col.1, lines 39-40 wireless).

As regarding claim 25, Lin-Gris discloses downloading over a wireless connection is performed through the cellular communication network (see Lin col.1, lines 15-16).

As regarding claim 26, Lin-Gris discloses downloading over a wireless connection is achieved by way of a short-range connection (see Lin col.1, lines 15-24).

As regarding claim 27, Lin-Gris discloses wherein the short-range connection is an infrared connection (see Lin col.1, lines 15-24).

As regarding claim 28, Lin-Gris discloses the indicia is stored in an application-license database in connection with the application database (see Lin col.4, lines 56-67).

As regarding claim 29, Lin-Gris discloses wherein the information identifying the user is based on Subscriber Identity Module SIM information (see Lin col.4, lines 14, SIM).

As regarding claim 30, Lin-Gris discloses receiving in the application database a request from the user for a subsequent downloading of a previously-downloaded application (see Gris col.9, lines 1-14); determining whether lifetime remains by reference to the stored indicia of the selected lifetime for a previously-downloaded application for the user (see Gris col.9, lines 1-14); and downloading the application a subsequent time, if it is determined that at least a portion of the selected lifetime remains for the requested application (see Gris col.9, lines 1-14). The same motivation was utilized in claim 23 applied equally well to claim 30.

As regarding claim 31, Lin-Gris discloses wherein the request is received from a second mobile terminal (see Lin col.2, lines 32-41).

As regarding claim 32, Lin-Gris discloses wherein the subsequent downloading comprises downloading the application to a second mobile terminal (see Gris col.11, lines 29-43). The same motivation was utilized in claim 23 applied equally well to claim 32.

As regarding claim 33, Lin-Gris discloses refusing the request for subsequent downloading if the determination indicates that lifetime has expired in the stored indicia for said user (see Gris col.9, lines 1-14). The same motivation was utilized in claim 23 applied equally well to claim 33.

As regarding claim 34, Lin-Gris discloses downloading is performed over a wireless connection (see Lin col.1, lines 39-40).

As regarding claim 35, Lin-Gris discloses downloading over a wireless connection is performed through the cellular communication network (see Lin col.4, line 33).

As regarding claim 36, Lin-Gris discloses downloading over a wireless connection is achieved by way of a short-range connection (see Lin col.1, lines 15-24).

As regarding claim 37, Lin-Gris discloses wherein the short-range connection is an infrared connection (see Lin col.1, lines 15-24).

As regarding claim 38, Lin-Gris discloses wherein the lifetime is a period of time measured from a predetermined starting time (see Gris col.7, lines 30-57). The same motivation was utilized in claim 23 applied equally well to claim 38.

As regarding claim 39, Lin-Gris discloses the predetermined starting time is the time of downloading the chosen application (see Gris col.7, lines 30-57). The same motivation was utilized in claim 23 applied equally well to claim 39.

As regarding claim 40, Lin-Gris discloses the lifetime is a predetermined number of downloads (see Gris col.7, lines 22-26). The same motivation was utilized in claim 23 applied equally well to claim 40.

As regarding claim 41, Lin discloses an apparatus comprising:

a network infrastructure configured to communicate with at least one mobile terminal (see Lin figure.2, mobile telephone communicate with sever over internet);

an application database containing at least one downloadable application (see Lin col.4, lines 56-67);

a downloading server configured to communicate through the network infrastructure and configured to detect a request containing information identifying a

user to download a chosen application of the at least one application contained in the application database, the downloading server being further configured to obtain the application from the application database, and for downloading the application to the at least one mobile terminal (see Lin col.3, lines 31-65);

Lin does not specifically discloses the application having a user-selectable variable selectable lifetime during which the application is permitted to remain executable by an identified user; an application-license database coupled to downloading server, the application-license database configured to store the selected lifetime and the user-identifying information; wherein the downloading server is configured to compare the download request to the selected lifetime and the user-identifying information stored in the application-license database for the chosen application, wherein the downloading server is further configured to download said application if the user has application lifetime remaining for the requested application.

Gris discloses the application having a user-selectable variable selectable lifetime during which the application is permitted to remain executable by an identified user (see Gris col.7, lines 14-17); an application-license database coupled to downloading server, the application-license database configured to store the selected lifetime and the user-identifying information (see Gris col.6, lines 62-67) wherein the downloading server is configured to compare the download request to the selected lifetime and the user-identifying information stored in the application-license database for the chosen application (see Gris col.7, lines 30-57), wherein the downloading server is further configured to download said application if the user has application lifetime

remaining for the requested application (see Gris col.7, lines 30-57, col.9, line 14). The same motivation was utilized in claim 23 applied equally well to claim 41.

As regarding claim 43, Lin-Gris discloses wherein the selected lifetime expires as a function of a selected number of transactions (see Gris col.7, lines 1-27). The same motivation was utilized in claim 23 applied equally well to claim 43.

As regarding claim 44, Lin-Gris discloses wherein the lifetime expires as a function of a selected time (see Gris col.7, lines 1-27). The same motivation was utilized in claim 23 applied equally well to claim 44.

As regarding claims 53-58, 63-67, 69-70, 72-73, the limitations of claims 53-58, 63-67, 69-70, 72-73, are similar to limitations of rejected claims 23-40.

As regarding claims 74-85, the limitations of claims 74-85, are similar to limitations of rejected claims 23-40.

As regarding claims 86-92, 96-97,101-103, the limitations of claims 86-92, 96-97,101-103, is similar to limitations of rejected claims 23-40.

Claims 42, 45-46, 48-49, 59-62, 68, 71, 93-95, 98-99 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lin and Gris as applied to claim 41 above, and further in view of Mankoff (us pat 6,385,591).

As regarding claim 42, Lin-Gris discloses the invention as was disclosed in claim 41, Lin-Gris further discloses downloadable application is preprogrammed with the selected lifetime (see Gris col.7, lines 1-27), however Lin-Gris does not discloses wherein the downloadable application configured to delete itself from the at least one mobile terminal when the selected lifetime expires.

Mankoff discloses the concept of the expire content is automatically deleted (see Mankoff col.4, lines 35-37).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to combine the teaching of Mankoff to the invention of Lin-Gris to delete the expired content for the purpose of preventing the unauthorized used of the content.

As regarding claim 45, Lin discloses a central processing unit (CPU) (see Lin col.4, lines 2-11, the CPU is inherently feature of the mobile terminal);
a memory unit coupled with the CPU and configured to store storing at least one application (see Lin col.4, lines 2-11, the memory is inherently feature of the mobile terminal); an application requestor coupled with the CPU and configured to generate requests to download a variable application from an application database (see Lin col.4, lines 2-11).

Lin does not specifically disclose a lifetime selector coupled with the CPU and configured to select a lifetime applicable to a downloaded application; a lifetime determiner coupled with the CPU and configured to determine a remaining portion of the lifetime associated with a downloaded application; and an application disabler coupled with the CPU and configured to disable an application; wherein the apparatus is operable to receive and store downloaded applications and to permit the downloaded application to be executed at the mobile terminal as long as a portion of its associated lifetime remains.

Gris teaches disclose a lifetime selector coupled with the CPU and configured to select a lifetime applicable to a downloaded application (see Gris col.7, lines 1-26); a lifetime determiner coupled with the CPU and configured to determine a remaining portion of the lifetime associated with a downloaded application (see Gris col.11, lines 44-67); wherein the apparatus is operable to receive and store downloaded applications and to permit the downloaded application to be executed at the mobile terminal as long as a portion of its associated lifetime remains (see Gris col.9, lines 1-14). The same motivation was utilized in claim 23 applied equally well.

The combination of Lin-Gris does not disclose an application disabler coupled with the CPU and configured to disable an application;

Mankoff discloses the concept of disabling an application (see Mankoff col.4, lines 34-36). The same motivation was utilized in claim 42 applied equally well to claim 45.

As regarding claim 46, Lin-Gris-Mankoff discloses wherein the application disabler is configured to disable an application when the associated lifetime has expired (see Mankoff col.4, lines 34-36). The same motivation was utilized in claim 42 applied equally well to claim 46.

As regarding claim 48, Lin-Gris-Mankoff discloses wherein the application requester is operable to request a previously-downloaded application for which at least a portion of the associated lifetime remains (see Gris col.9, lines 1-20). The same motivation was utilized in claim 23 applied equally well to claim 48.

As regarding claim 49, Lin-Gris-Mankoff discloses wherein the memory unit also stores lifetime indicia associated with downloaded applications (see Lin col.4, lines 12-29).

As regarding claims 59-62, 68, 71, the limitations of claims 59-62, 68, and 71 are similar to limitations of the rejected claims 45, 46, 48-49, therefore rejected for the same rationale.

As regarding claims 93-95, 98-99, the limitations of claims 93-95, 98-99 are similar to limitations of the rejected claims 45-46,48-49, therefore rejected for the same rationale.

Claim 47 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lin and Gris as applied to claim 41 above, and further in view of Lazarus et al (us pat 5,652,613) (hereinafter Lazarus).

As regarding claim 47, Lin-Gris discloses the invention as claim in claim 45 above however, Lin-Gris does not disclose delete an application with lifetime remaining in order to free storage space in the memory unit.

Lazarus teaches delete an application with lifetime remaining in order to free storage space in the memory unit (see Lazarus col.4, lines 29, deleting unexpired content if not enough memory).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to combine the teaching of Lazarus to the invention of Lin-Gris to delete the unexpired content for the purpose of providing memory sufficient to download the new content.

Claim 100 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lin and Gris as applied to claim 41 above, and further in view of what was well known in the art.

as regarding claim 100, Lin-Gris discloses invention as claim in claim 86 above, however, Lin-Gris does not disclose transmitting a selection of a link at a website.

Official Notice is taken (see MPEP 2144.03) transmitting a selection of a link at a website is well known at the time the invention was made (see reference Smith pat # 6,615,248 col.2, lines 61-65, provides user with selectable links for accessing data).

It would have been obvious to one of ordinary skill in the art to incorporate transmitting a selection of a link at a website to Lin-Gris because a selection of a link at a website is well known in the art. One with ordinary skill in the art would have been motivated to transmitting a selection of a link at the website for the purpose of simplify the webpage and saving bandwidth.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DUYEN DOAN whose telephone number is (571)272-4226. The examiner can normally be reached on M-F 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thu V. Nguyen can be reached on (571) 272-6967. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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